



# **TEXAS INDIGENT DEFENSE COMMISSION**

## **Fiscal Monitoring Report**

**Kenedy County, Texas**

**FY 2015 Indigent Defense Expenses**

**Final Report**

**June 8, 2017**

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## **EXECUTIVE SUMMARY**

Kenedy County's fiscal monitoring desk review began on March 8, 2016. The fiscal monitor reviewed financial records to determine whether grant funds were spent in accordance with the terms and conditions of the Texas Indigent Defense Commission grants.

The expenditure period of October 1, 2014 to September 30, 2015 (FY2015) was reviewed as part of the fiscal monitoring desk review process.

### **Summary of Findings**

- Attorney fee vouchers did not contain the itemization that is needed to comply with Article 26.05(c) of the Texas Code of Criminal Procedure
- Written explanation from judges for variance in amounts approved and amounts requested on attorney fee vouchers were not present as required by Article 26.05(c) of the Texas Code of Criminal Procedure.

### **Objective**

The objectives of this review were to:

- determine whether grant funds were used for authorized purposes in compliance with laws, regulations, and the provisions of the grant;
- validate policies and procedures relating to indigent defense services;
- provide recommendations pertaining to operational efficiency; and
- assist with any questions or concerns on the indigent defense program requirements.

### **Scope**

The county's indigent defense expenditures were monitored to ensure compliance with applicable laws, regulations, and the provisions of the grant during FY2015. Records provided by the Kenedy County treasurer's office were reviewed.

### **Methodology**

To accomplish the objectives, the fiscal monitor talked with the county treasurer, the district court coordinator, and the county judge. The fiscal monitor reviewed:

- 100% of paid attorney fee vouchers;
- General ledger transactions provided by the Kenedy County treasurer's office;
- IDER and attorney fee schedule;
- Public attorney appointment list, attorney applications, attorney criminal and juvenile continuing legal education training documentation, any applicable contracts; and
- Kenedy County's local indigent defense plans.

# **DETAILED REPORT**

## **BACKGROUND INFORMATION**

### **County Background**

Kenedy County is located in South Texas on the Gulf of Mexico. The County occupies an area of 1,946 square miles, with 1,458 square miles is land and 487 square miles is water. Kenedy County has an estimated population of 423. Kenedy County is a political subdivision of the State of Texas. The County was created in 1921 from parts of Hidalgo and Willacy counties. The county was named for Mifflin Kenedy, an area rancher and steamboat operator and an early partner of the King Ranch. The King Ranch covers a large part of Kenedy County. Neighboring counties are Kleberg, Willacy, Hidalgo and Brooks.

### **Commission Background**

In January 2002, the 77<sup>th</sup> Texas Legislature established the Texas Task Force on Indigent Defense. In May 2011, the 82<sup>nd</sup> Texas Legislature changed the name of the Texas Task Force on Indigent Defense to the Texas Indigent Defense Commission (Commission) effective September 1, 2011. The Commission remains a permanent standing committee of the Texas Judicial Council, and is administratively attached to the Office of Court Administration (OCA).

The Commission provides financial and technical support to counties to develop and maintain quality, cost-effective indigent defense systems that meet the needs of local communities and the requirements of the constitution and state law.

The purpose of the Commission is to promote justice and fairness to all indigent persons accused of criminal conduct, including juvenile respondents, as provided by the laws and constitutions of the United States and the State of Texas. The Commission conducts these reviews based on the directive in Section 79.037(c) Texas Government Code, to “monitor each county that receives a grant and enforce compliance by the county with the conditions of the grant,” as well as Section 173.401(a), Texas Administrative Code, which provides that “the Commission or its designees will monitor the activities of grantees as necessary to ensure that grant funds are used for authorized purposes in compliance with laws, regulations, and the provisions of the grant.”

### **Formula Grant**

The County submitted the FY 2015 indigent defense on-line grant application to assist in the provision of indigent defense services. Kenedy County met the formula grant eligibility requirements and was awarded \$6,100 for FY 2015.

### **Discretionary Grant**

Kenedy County did not apply for a discretionary grant for FY 2015; therefore no discretionary grant funds were reviewed.

## **DETAILED FINDINGS AND RECOMMENDATIONS**

### **Finding One**

Two of the twenty-nine attorney fee vouchers reviewed did not meet the statutory requirements of the Code of Criminal Procedure (CCP) Article 26.05(c) because the vouchers did not include the amount requested to be paid by the attorney. CCP Article 26.05(c) reads in part "...No payment shall be made under this article until the form for itemizing the services performed is submitted to the judge presiding over the proceedings or, if the county operates a managed assigned counsel program under Article 26.047, to the director of the program, and until the judge or director, as applicable, approves the payment."

In addition to the two attorney fee vouchers that did not request an amount, another three vouchers were not signed and approved by the judge.

### **Recommendation:**

To ensure compliance of CCP Article 26.05(c), the County should require attorneys to submit invoices that include both itemized services performed and the fee amount requested for those services in addition to information currently provided.

The County should develop a process to confirm the judge has approved all vouchers.

### **County Response and Corrective Action Plan**

*Kenedy County does require the attorneys to submit fee vouchers which indicate either a flat fee for the case or to itemize their hours and dates of service on the back and submit the voucher with a total amount they are requesting. To ensure compliance all attorneys' fee vouchers submitted to the Court will need to be reviewed going forward by the Court Manager or Court personnel prior to being submitted to auditor's office for payment to ensure all required amounts requested are on the vouchers prior to obtaining the Court's signature. If the circumstance arises that there is no requested amount or the attorney fee voucher is lacking information, it will be returned to the attorney for completion. Altogether, the attorney fee vouchers should be submitted, reviewed by the Court Manager or Court personnel, submitted to Court if complete or returned to attorney for more information if not complete, signed by the Court, and forwarded to the auditor's office for payment.*

*Once the fee voucher is signed by the presiding judge, the Court manager or Court personnel will note that the voucher has been approved. The Court Manager and/or Court Personnel should keep a running excel spreadsheet to include the following information: which defendants requested an attorney, which attorney was appointed, the date of the appointment,*

*the cause number, when the attorney fee voucher was submitted to court, and when the attorney voucher was reviewed by Court personnel and submitted to the auditor. This will serve as a checklist that the attorney for that particular case submitted a fee voucher and it was approved by the judge. This process will confirm that the judge has approved all the attorney fee vouchers that were submitted and also address those cases in which the vouchers were not signed by the judge, and allow us to see what cases the Court never received a fee voucher. On these cases, the Court can follow up with the appointed attorney to ensure that they submit a voucher in a timely manner.*

## **Finding Two**

The CCP Article 26.05(c) reads in part... and “if the judge or director disapproves the requested amount of payment, the judge or director shall make written findings stating the amount of payment that the judge or director approves and each reason for approving an amount different from the requested amount. One voucher of the twenty-nine reviewed had an amount requested that the judge changed, however no written explanation for the variance was provided.

## **Recommendation:**

The County should develop a process to confirm the judge has approved all vouchers and has included an explanation for any variance to the attorney’s requested amount.

## **County Response and Corrective Action Plan**

*There are several reasons why the Court will change the amount requested to a different amount, but as per CCP Article 26.059(c) it does require a written explanation by the Court. With the new process implemented above, this should also be reviewed by the Court Manager and/or Court personnel to ensure that if the amount was changed a written explanation has been given on the fee voucher prior to it being submitted to the Auditors office.*

*Kenedy County has implemented the Recommendations set out by the Commission by creating a new process to handle the flow of attorney fee vouchers and will immediately begin to follow these recommendations in order to be in complete compliance with TIDC.*

# **APPENDIXES**

## APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT

<b>KENEDY COUNTY INDIGENT DEFENSE EXPENDITURES</b>			
<b>Expenditures</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>
Population Estimate	452	408	423
Juvenile Assigned Counsel	\$0.00	\$0.00	\$0.00
Capital Murder	\$0.00	\$0.00	\$0.00
Adult Non-Capital Felony Assigned Counsel	\$28,428	\$5,000	\$8,490
Adult Misdemeanor Assigned Counsel	\$1,950	\$11,419	\$3,075
Juvenile Appeals	\$0.00	\$0.00	\$0.00
Adult Felony Appeals	\$0.00	\$0.00	\$0.00
Adult Misdemeanor Appeals	\$0.00	\$0.00	\$0.00
Licensed Investigation	\$0.00	\$0.00	\$0.00
Expert Witness	\$0.00	\$0.00	\$0.00
Other Direct Litigation	\$0.00	\$0.00	\$0.00
Total Court Expenditures	\$30,378	\$16,419	\$11,565
Administrative Expenditures	\$0.00	\$0.00	\$0.00
Funds Paid by Participating County to Regional Program	\$0.00	\$1,000	\$0.00
Total Court and Administrative Expenditures	\$30,378	\$17,419	\$11,565
Formula Grant Disbursement	\$6,556	\$7,943	\$6,100
Equalization Disbursement	\$0.00	\$0.00	\$0.00
Discretionary Disbursement	\$0.00	\$0.00	\$0.00
Reimbursement of Attorney Fees	\$0.00	\$0.00	\$0.00
Reimbursement by State Comptroller for Writs of Habeas Corpus	\$0.00	\$0.00	\$0.00
Total Assigned Counsel Cases	53	45	29

### Indigent Defense Expenditure Reporting

Source: Texas Indigent Defense Commission records

<b>Kenedy County</b>				
<b>Year</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>Texas 2015</b>
Population (Non-Census years are estimates)	452	408	423	27,213,214
Felony Charges Added (from OCA report)	45	26	40	271,744
Felony Cases Paid	48	15	24	193,560
% Felony Charges Defended with Appointed Counsel	107%	58%	60%	71%
Felony Trial Court-Attorney Fees	\$28,428	\$5,000	\$8,490	\$110,036,405
Total Felony Court Expenditures	\$28,428	\$5,000	\$8,490	\$126,091,674
Misdemeanor Charges Added (from OCA report)	130	98	54	503,299
Misdemeanor Cases Paid	5	30	5	222,408
% Misdemeanor Charges Defended with Appointed Counsel	4%	31%	9%	44%
Misdemeanor Trial Court Attorney Fees	\$1,950	\$11,419	\$3,075	\$39,141,724
Total Misdemeanor Court Expenditures	\$1,950	\$11,419	\$3,075	\$40,061,131
Juvenile Charges Added (from OCA report)	1	1	0	31,813
Juvenile Cases Paid	0	0	0	41,068
Juvenile Attorney Fees	\$0.00	\$0.00	\$0.00	\$11,072,434
Total Juvenile Expenditures	\$0.00	\$0.00	\$0.00	\$11,747,908
Total Attorney Fees	\$30,378	\$16,419	\$11,565	\$165,942,108
Total ID Expenditures	\$30,378	\$17,419	\$11,565	\$238,029,838
Increase In Total Expenditures over Baseline	3.28%	1.84%	1.19%	168%
Total ID Expenditures per Population	\$67.21	\$42.69	\$27.34	\$8.75
Commission Formula Grant Disbursement	\$6,556	\$7,943	\$6,100	\$23,931,689
Costs Recouped from Defendants	\$0.00	\$0.00	\$0.00	\$11,530,419

**Indigent Defense Expenditure Reporting**

Source: Texas Indigent Defense Commission records

## **APPENDIX B – CRITERIA**

### **Criteria**

- Uniform Grant Management Standards
- Texas Government Code, Section 79.036. Indigent Defense Information
- Texas Government Code, Section 79.037. Technical Support; Grants
- Code of Criminal Procedures Art 26.04 Procedures for Appointing Counsel
- Code of Criminal Procedures Art 26.05 Compensation of Counsel Appointed to Defend
- Texas Administrative Code - Title 1, Part 8, Chapter 174 Subchapter A Rule 174.1
- Texas Administrative Code - Title 1, Part 8, Chapter 174 Subchapter A Rule 174.2
- Texas Administrative Code - Title 1, Part 8, Chapter 174 Subchapter B Definitions
- FY2015 Indigent Defense Expenditure Report Manual found at:  
<http://www.tidc.texas.gov/media/40464/fy15-ider-manual.pdf>

## **APPENDIX C – DISTRIBUTION LIST**

The Honorable Louise E. Turcotte, III  
Constitutional County Judge  
P.O. Box 37  
Sarita, TX 78385

The Honorable Jack William Pulcher  
105th District Court Judge  
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